

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>KIZZY LANDRY and INDIA LANDRY,</b>	<b>Civil Action No.: 4:17-cv-3004</b>
	)(
<i>Plaintiffs,</i>	)(
	)(
	)(
<b>V.</b>	)(
	)(
<b>CYPRESS FAIRBANKS ISD,</b>	)(
<b>MARK HENRY, <i>Individually,</i></b>	)(
<b>MARTHA STROTHER, <i>Individually</i></b>	)(
<b>JAMIE JOHNSON, <i>Individually,</i></b>	)(
<b>MARY JAMES, <i>Individually, and</i></b>	)(
<b>PENNY IRWIN-FITT, <i>Individually and,</i></b>	)(
<b>SECRETARY WALTERS, <i>Individually,</i></b>	)(
	)(
<i>Defendants.</i>	)(

**PLAINTIFF'S 2<sup>nd</sup> AMENDED ORIGINAL COMPLAINT FOR  
DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, AND DAMAGES**

TO THE HONORABLE KEITH P. ELLISON:

NOW COME PLAINTIFFS KIZZY LANDRY and INDIA LANDRY, complaining of CYPRESS FAIRBANKS ISD and PRINCIPAL MARTHA STROTHER *Individually*, seeking injunctive and declaratory relief and damages and will show the following:

**I. INTRODUCTORY FACTS and STATEMENT**

1. India Landry, an African-American female, at the time 17 (now 18), a Windfern High School (Windfern) student had respectfully sat for the Pledge of Allegiance (the Pledge) around 200 times in previous schools in the Cypress-Fairbanks Independent School District. At Windfern, however, it was different.

2. During the Spring Semester of 2017 India was told to leave the class on five separate occasions by English Teacher Jamie Johnson because she sat for the Pledge of Allegiance (The

Pledge).

3. Also, during the Spring Semester of 2017 India's Street Law teacher Mary James berated her for sitting for the Pledge and that it was disrespectful to this country. The next day Mary James expelled India from the classroom for sitting respectfully for the Pledge and sent her to Head Principal Martha Strother's office (Principal Strother). Another African America student ("D") was also sent to office for sitting for the Pledge along with India.

4. At the office Principal Strother told both India and D that they would have to stand for the Pledge.

5. In the Fall Semester 2018 India was sitting in head Principal Strother's office when the Pledge was recited over the school intercom. India continued to sit. Principal Strother upon seeing this immediately expelled India from school saying "*Well you're kicked outta here.*" Assistant Principal Fitt then gave Kizzy Landry, India's mother, five minutes to pick up India or the police would escort her out of the school which was heard by India Landry as was intended by Assistant Principal Fitt. Assistant Principal Fitt did not instruct Principal Strother that expelling India for peacefully sitting for the Pledge was Unconstitutional

6. The right for minor students not to be forced to recite or stand for the Pledge is an old one predating, for example, *Brown v. Board of Education* by over a decade. *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943) (*We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.*) See also *Frazier v. Winn*, 535 F.3d 1279 (11th Cir. 2008). The plaintiff seeks appropriate declaratory and injunctive relief, as well as damages. Furthermore, instant expulsion from a public school is not allowed if the

student is not a danger. *Goss v. Lopez*, 419 U.S. 565 (1975).

## **II. JURISDICTION, VENUE, AND CAUSE OF ACTION**

7. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391 as the facts arose in Harris County, Texas within the U.S. Southern District of Texas and defendants are located within the district.

9. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

10. This action is brought pursuant to 42 U.S.C. §§ 1983, 1985, 1988 and Title VI of the Civil Rights Act of 1964.to redress the deprivation, under color of state law, of rights secured by the U.S. Constitution.

## **III. PARTIES**

11. Plaintiff Kizzy Landry, individually, is a resident of Harris County, Texas.

12. Plaintiff India Landry is a resident of Harris County, Texas.

13. Cypress Fairbanks ISD is a governmental entity existing under the laws of the state of Texas and can be served with process by serving Superintendent Mark Henry at 10300 Jones Road, Houston, Texas 77065 or wherever he is found. Superintendent Henry is the top executive officer of the Cypress Fairbanks ISD.

14. Defendant Principal Martha Strother is an individual and resident of Harris County, Texas and can be served with process 12630 Windfern Road, Houston, Texas 77064 or wherever she is found.

15. Defendant Mark Henry is an individual and resident of Harris County, Texas and can be served with process 12630 Windfern Road, Houston, Texas 77064 or wherever he is found.

16. Defendant Jamie Johnson is an individual and resident of Harris County, Texas and can be served with process 12630 Windfern Road, Houston, Texas 77064 or wherever she is found.

17. Defendant Mary James is an individual and resident of Harris County, Texas and can be served with process 12630 Windfern Road, Houston, Texas 77064 or wherever she is found.

18. Defendant Penny Irwin-Fitt is an individual and resident of Harris County, Texas and can be served with process 12630 Windfern Road, Houston, Texas 77064 or wherever she is found.

19. Defendant Secretary Walter is an individual and resident of Harris County, Texas and can be served with process 12630 Windfern Road, Houston, Texas 77064 or wherever she is found.

#### **IV. ADDITIONAL FACTS**

20. India Landry (India) was a student at Windfern High School of the Cypress Fairbanks ISD. Kizzy Landry (Ms. Landry) is the mother of India Landry. Windfern is a public school receiving state and federal funds. Cypress-Fairbanks ISD has designated Windfern a “Campus of Choice” and allowed special behavior requirements.<sup>1</sup> According to Windfern’s website: *“Windfern High School, CFISD’s “campus of choice,” serves eleventh and twelfth graders who choose to apply for admission from the ten traditional attendance zone high schools. Students must be recommended by their home campus assistant principal and counselor and must write a statement of why they want to attend Windfern and what they are willing to do to ensure their success. Applying to Windfern is much like applying to a college: students make a deliberate choice to apply for admission and the college chooses which students to accept for admission. Furthermore, if students do not live up to the academic and behavior standards of the college, they can be withdrawn. This admissions process defines the difference between a campus of*

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<sup>1</sup> Plaintiffs allege one of these behavioral requirements promoted by Cy-Fair ISD is standing for the Pledge.

*choice and an attendance zone campus which has open enrollment for all students living in the area designated by the district as its attendance zone.”*

21. India Landry, an African-American female, at the time 17 (now 18), a Windfern High School (Windfern) student had respectfully sat for the Pledge of Allegiance (the Pledge) around 200 times in previous schools in the Cypress-Fairbanks Independent School District. At Windfern, however, it was different.

22. During the Spring Semester of 2017 India was told to leave the class on five separate occasions by English Teacher Jamie Johnson because she sat for the Pledge of Allegiance (The Pledge).

23. Also, during the Spring Semester of 2017 India’s Street Law teacher expelled her from the classroom for sitting respectfully for the Pledge and sent her to Head Principal Martha Strother’s office (Principal Strother). Another African America student (“D”) was also sent to office for sitting for the Pledge along with India.

24. At the office Principal Strother told both India and D that they would have to stand for the Pledge.

25. In the Fall Semester 2018 India was sitting in head Principal Strother’s office when the Pledge was recited over the school intercom. India continued to sit. Principal Strother upon seeing this immediately expelled India from school saying *“Well you’re kicked outta here.”* Assistant Principal Fitt then gave Kizzy Landry, India’s mother, five minutes to pick up India or the police would escort her out of the school.

26. October 2, 2017, India happened, however, to be sitting in head principal Martha Strother’s office, with school secretary Mrs. Walter’s present, at 9:30 am when the pledge was recited over the school intercom. India continued to sit. Principal Strother upon seeing this

immediately expelled India from school saying angrily “*Well you’re kicked outta here.*” After sitting for a few minutes India was directed to Assistant Principal Fitt’s office. Principal Penny Irwin-Fitt told India in a hostile tone to call her mother to come pick her up and if your mom does not get her in five minutes an officer will escort her from the building. Mrs. Walters said in a hostile manner, “This is not the NFL.”<sup>2</sup> Ms. Fitt said India was going to stand for the Pledge *like the other African-American in her class.*

27. Ms. Landry got a phone call from India to pick her up as she was being expelled from school. Ms. Landry arrive at Windfern at about 10 am and tried to talk to the Principal Strother to determine the reason for the pulsion but Principal Strother would not see Ms. Landry. The secretary said to sign I.L. out of school.

28. After Ms. Landry got home she phoned at 10:45 am to Cypress-Fairbanks ISD Superintendent Mark Henry.<sup>3</sup> Ms. Landry explained the entire situation as a message with the Cypress-Fairbanks ISD receptionist and the receptionist said someone would call Ms. Landry that day or the latest the morning of October 3, 2017.

29. The next day October 3, 2017 Ms. Landry again called the Cypress-Fairbanks ISD Superintendent Henry and told the receptionist no one had called as promised and repeated the incident facts. The ISD receptionist stated she had forwarded Ms. Landry’s message by email and said she would forward the message again by email to Cypress Fairbanks ISD Superintendent Henry. About 8 am Ms. Landry called Cypress Spring High School and spoke Assistant Principal Smith to see if India could return to Cypress Spring High School. Ms. Landry

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<sup>2</sup> This refers to the mostly African American NFL players kneeling during the National Anthem in protest of the discriminatory treatment of African Americans that exists in America,

<sup>3</sup> Superintendent Mark Henry is charged with overseeing school operations and to keep the school board apprised of important developments. Martha Strother was designated authority to handle student behavior at Windfern.

and India then went to Mr. Smith's office. Principal Smith phoned Principal Strother and then he reported to Ms. Landry that no one can sit for the Pledge at her school and India cannot come back. Later that evening around 7 or 8 pm Mr. Campbell an assistant to Cypress Fairbanks ISD Superintendent Henry in student services phoned. Mr. Campbell indicated he would contact Principal Strother that night or in the morning.

30. October 4, 2017 in the afternoon Mr. Campbell affirmed he had spoken with Principal Strother and that Principal Strother should be calling Ms. Landry that day. Ms. Landry received no phone call. Principal Strother called in the evening and asked to meet you regarding the possibilities of India returning to Windfern. A meeting time was set up for October 5, 2017 at 8:30 am.

31. October 5, 2017 at 8:30 am Ms. Landry and India met with Principal Strother. Principal iterated that India must stand for the Pledge to be let back in at Windfern. Principal Strother said that sitting was disrespectful and would not be allowed. Principal Strother suggested that India write about justice and African Americans being killed. Ms. Strother then said the meeting is over and if India does not stand for the Pledge she cannot return to Windfern.

32. Throughout this ordeal Principal Strother stated that Windfern is a "school of choice" and that is why

33. At about 10 am Ms. Landry got a call from a local TV news reporter from KHOU Channel 11 about the "pledge controversy." At 5 pm that afternoon a story aired on KHOU Channel 13 News about the situation including suggesting it was Unconstitutional.

34. October 6, 2017 at about 8:41 am Principal Strother called and said now India could sit for the Pledge. India returned to Windfern at 10:30 am. Principal Strother still has her job at Windfern High School.

35. The Cy-Fair ISD Handbook States that the:

*Pledge of Allegiance and a Minute of Silence Texas law requires (Texas Education Law Section 25.082) students to recite the Pledge of Allegiance to the United States flag and the Pledge of Allegiance to the Texas flag each day. Parents may submit a written request to the principal to excuse their child from reciting a pledge.*

The Texas Education Code Section 25.082 sets forth that:

...

*(b) The board of trustees of each school district and the governing board of each open-enrollment charter school shall require students, once during each school day at each campus, to recite:*

*(1) the pledge of allegiance to the United States flag in accordance with 4 U.S.C. Section 4; and*

*(2) the pledge of allegiance to the state flag in accordance with Subchapter C, Chapter 3100, Government Code.*

*(b-1) The board of trustees of each school district and the governing board of each open-enrollment charter school shall require that the United States and Texas flags be prominently displayed in accordance with 4 U.S.C. Sections 5 - 10 and Chapter 3100, Government Code, in each campus classroom to which a student is assigned at the time the pledges of allegiance to those flags are recited.*

36. After India returned to class several Windfern High School teachers would not let her makeup her assignments causing a reduction in her grades.

37. India and Ms. Landry suffered at least anxiety, depression, and fear as a result of Defendants' action and inactions. Ms. Landry had to use her vehicle and time away from work due to Defendants' actions and inactions.

## **V. LEGAL CLAIMS**

### **Violation of the 1st Amendment**

38. Plaintiffs reassert all previous paragraphs.

39. The First Amendment to the Constitution provides that "Congress shall make no law...abridging the freedom of speech..."



40. This First Amendment right extends to public school students who do not wish to be forced to stand for the pledge. *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943). Because India peacefully exercised her right not to stand for the Pledge all the defendants violated this right.

#### Violation of the 5<sup>th</sup> and 14<sup>th</sup> Amendments

41. Plaintiffs reassert all previous paragraphs.

42. The Fifth Amendment to the Constitution provides that “No person shall...be deprived of life, liberty, or property, without due process of law...”

43. The Fourteenth Amendment applies this right to the State action “...nor shall any state deprive any person of life, liberty, or property, without due process of law...”

44. This Fifth Amendment right extends to public school students who are subject to being expelled from public school. *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Brown v. Board of Education*, 347 U.S. 483 (1954). “*The precise nature of the private interest involved in this case is the right to remain at a public institution of higher learning in which the plaintiffs were students in good standing.*” *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961).

45. Regarding students, such as India, subject to suspension and expulsion “*due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.*” *Goss v. Lopez*, 419 U.S. 565 (1975).

46. Defendant Principal Strother’s instant expulsion of India from school without notice and opportunity to be heard and Superintendent Henry’s failure to change the expulsion besides

having knowledge of the facts and circumstance violated India's due process rights and she suffered at least loss of education and great mental anguish.

**42 USC SECTION 1985 and TITLE VI of the CIVIL RIGHTS ACT OF 1964**

47. India was discriminated against because of her race, African American, and was not treated the same as white children. The facts herein state a claim under both 42 U.S.C. Section 1985 and Title VI of the Civil Rights Act of 1964.

**VIOLATION OF FOURTEENTH AMENDMENT RIGHT TO THE EQUAL PROTECTION OF THE LAWS**

48. Plaintiff reasserts all previous paragraphs.

49. Defendant acted arbitrarily in denying India's right to sit for the Pledge and treated her differently than those who stood for the Pledge.

**VI. REQUEST FOR RELIEF**

**WHEREFORE**, the plaintiffs respectfully request that this Court:

- a. Enter judgment awarding the plaintiffs compensatory damages against defendants jointly and severally in an amount to be determined;
- b. Declare that the defendants have violated the rights of the plaintiffs for the reasons described above;
- c. Enter judgment awarding the plaintiffs exemplary and punitive damages against the individual defendants;
- d. Award the plaintiffs reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988;
- e. Award pre- and post-judgment interest;

- f. Order that Cypress-Fairbanks ISD immediately instruct each and every employee that students have the right to choose not to stand for the Pledge and to discipline any Cypress-Fairbanks' employees that interfere with the exercise of that right.
- g. Declare Texas Education Law Section 25.082 or the parts requiring standing and reciting the Pledge of Allegiance and Texas Pledge Unconstitutional, and
- h. Award all other relief to which plaintiffs show themselves entitled.

Respectfully Submitted,  
KALLINEN LAW PLLC

/s/ Randall L. Kallinen

Randall L. Kallinen

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Counsel for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing has been transmitted to the all counsel appearing in this cause and pro se parties on this the 1<sup>st</sup> day of May 2018 by filing with the ECF System of the United States District Court for the Southern District of Texas which notifies all ECF filers.

/s/ Randall L. Kallinen

Randall L. Kallinen